IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8082 OF 2004

Mr. H.G. Jainani ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

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Dr. V.K. Choudhari, counsel for Petitioner

Mr.A.H. Palekar, A.G.P. for Respondents 1 to 3.

Mr. J.S. Yadav, counsel for Respondent No.4.

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CORAM: B. H. MARLAPALLE, J.

DATED: 16TH MARCH, 2005

P. C.:-

1. Heard Dr. Choudhary, the learned counsel for the petitioner who is a member of the respondent No.4 Society i.e. Sarang Towers Co-operative Housing Society Ltd., Andheri (W), Mumbai. Being aggrieved by the order passed by the Deputy Registrar, Appeal No.245 of 2003 was filed before the Divisional Joint Registrar and subsequently Revision Application U/sec. 154 of the Maharashtra Co-operative Societies Act, 1960 ("the Act" for short) came to be filed before the State Government. The said Revision has been allowed by the order dated 24.6.2004 and hence, this petition.

2. Dr. Choudhary has referred to the provisions of Section 71-A of the Act, raising the main grievance regarding the rights of the societies to institute appeal or revision when the action was sought to be taken U/sec. 78 of the Act. The question raised by Dr. Choudhary could have been appropriately considered and upheld if the action was against the old committee members against whom the show cause notices were issued. In the instant case, fresh elections were held on 12.10.2003 and the show cause notice was dated 10.10.2003, the Deputy Registrar passed an order on 21.11.2003 and removed the new elected Managing Committee members. This was gross abuse of the statutory powers and therefore, the State Government rightly exercised the revisionary powers and corrected the injustice caused to the newly elected committee members.

3. Hence, no interference is called for and the petition is rejected summarily.

4. It is clarified that the observations made in the impugned order and reading "in the instant case, however, no action U/sec. 78 has been initiated against the committee members in their personal capacities and hence, bar provided in this section cannot be made applicable to the present case", will have to be read only in the context of the new

elected members and it is further clarified that the show cause notices as issued against the old Managing Committee members could be taken to their logical conclusions against the old committee members.